



PO BOX 201706
Helena, MT 59620-1706
(406) 444-3064
FAX (406) 444-3036

Water Policy Interim Committee 63rd Montana Legislature

SENATE MEMBERS

CHAS VINCENT--Chair
JENNIFER FIELDER
BRADLEY MAXON HAMLETT
SHARON STEWART-PEREGOY

HOUSE MEMBERS

KATHLEEN WILLIAMS--Vice Chair
PAT CONNELL
STEVE FITZPATRICK
REILLY NEILL

COMMITTEE STAFF

JASON MOHR, Lead Staff
HELEN THIGPEN, Staff Attorney
NADINE SPENCER, Secretary

Millie Heffner
Department of Natural Resources and Conservation
P.O. Box 201601
1424 Ninth Ave.
Helena, MT 59620

Jan. 7, 2014

Ms. Heffner,

As the legislative committee tasked with studying water policy in Montana, the Water Policy Interim Committee has debated water wells exempt from permitting since 2007. It is under this mandate and years of experience that the WPIC submits comments on the proposed rule to define the term "combined appropriation" as it applies to exempt wells.

The majority of the committee's work during the 2011-2012 interim was devoted to this topic. Out of that interim came several recommendations and two bill drafts.

Those recommendations were:

- * It is reasonable to restrict the use of exempt wells in basins where new surface water uses are mostly limited and where hydrogeologic modeling concludes that surface waters would be depleted by an exempt well within a fairly short period of time that would be most likely to affect senior water right holders.
- * Restrictions on exempt wells in certain areas should be limited to areas where hydrogeologic data exists, including studies conducted by the Ground Water Investigation Program or other hydrogeologic studies.
- * The term "combined appropriation" should be defined by the Legislature. That definition should be appropriation from the same source aquifer of more than 35 gallons per minute and 10 acre-feet by two or more wells or developed springs that are physically connected into the same system.

The sentiments of these recommendations were incorporated into Senate Bills No. 19 and 346. Senate Bill No. 346 outlined the process to create stream depletion zones, areas where scientific modeling demonstrates ground water withdrawals effect surface water. Within these zones, water wells exempt from permitting are further limited.

WATER POLICY INTERIM
COMMITTEE. 2013-14

Senate Bill No. 19 defined the term "combined appropriation" as referenced above. This definition essentially codifies the rule that has been in place since 1993. Senate Bill No. 19 passed the Senate and the House, but was vetoed by the governor.

The WPIC is concerned that the proposed rules are not consistent with the statute and ignores the history of the department's own rule making. Since 1987, the term "combined appropriation" has not been defined in statute. Yet the department has adopted two different definitions, proposed another last year, and is now proposing a fourth version.

How can four different definitions be consistent and reflect the intent of a term that has not changed in statute?

The new proposal, as well as the rule proposed last year, both ignore the intent of SB19 and fail to address the concerns of WPIC detailed earlier in this letter.

Sincerely,

Chas Vincent
Chairman, Water Policy Interim Committee